

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.

ATTORNEYS AT LAW

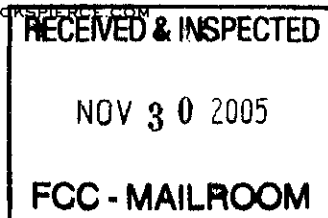
RALEIGH, NORTH CAROLINA

MAILING ADDRESS
POST OFFICE BOX 1800
RALEIGH, N.C. 27602

OFFICE ADDRESS
1600 WACHOVIA CAPITOL CENTER
150 FAYETTEVILLE STREET MALL
RALEIGH, N.C. 27601

TELEPHONE (919) 839-0300
FACSIMILE (919) 839-0304

WWW.BROOKSPIERCE.COM



DOCKET FILE COPY ORIGINAL

November 29, 2005

L.P. McLENDON, JR.
EDGAR B. FISHER, JR.
W. ERWIN FULLER, JR.
JAMES T. WILLIAMS, JR.
WADE H. HARGROVE
M. DANIEL MCGINN
MICHAEL D. MEEKER
WILLIAM G. McNAIRY
EDWARD C. WINSLOW III
HOWARD L. WILLIAMS
GEORGE W. HOUSE
WILLIAM P.H. CARY
REID L. PHILLIPS
ROBERT A. SINGER
JOHN H. SMALL
RANDALL A. UNDERWOOD
S. LEIGH RODENBOUGH IV
MARK J. PRAK
JILL R. WILSON
MARC D. BISHOP
JIM W. PHILLIPS, JR.
MACK SPERLING
JEFFREY E. OLEYNIK
MARK DAVIDSON
JOHN W. ORMAND III
ROBERT J. KING III
V. RANDALL TINSLEY
S. KYLE WOOSLEY
FORREST W. CAMPBELL, JR.
MARCUS W. TRATHEN
JEAN C. BROOKS
JAMES C. ADAMS II
ALLISON M. GRIMM
ELIZABETH S. BREWINGTON
H. ARTHUR BOLICK II
J. EDWIN TURLINGTON
JOHN M. CROSS, JR.

JENNIFER K. VAN ZANT
DAVID W. SAR
BRIAN J. MCMILLAN
NATALIE KAY SANDERS
DAVID KUSHNER
DEREK J. ALLEN
CLINTON R. PINYAN
TERESA DELOATCH BRYANT
COE W. RAMSEY
ROBERT W. SAUNDERS
ELIZABETH V. LAFOLLETTE
GINGER S. SHIELDS
JENNIFER T. HARROD
CHARLES E. COBLE
JOHN M. DEANGELIS
KATHRYN V. PURDOM
STEPHEN G. HARTZELL
JESSICA M. MARLIES
ANDREW J. HAILE
CHARLES F. MARSHALL III
J. BENJAMIN DAVIS
CAROLINE RITCHIE HEIL
KATHERINE A. MURPHY
SARA R. VIZITHUM
C. SCOTT MEYERS
JOHN S. BUFORD
NICOLE A. CRAWFORD
ALEXANDER ELKAN
C. ROBIN BRITT, JR.
PATRICK J. JOHNSON
KATHERINE J. CLAYTON
JENNIFER A. GALASSI
KATHLEEN A. GLEASON
JANICE L. KOPEC
SUSAN M. YOUNG
DARRELL A. FRUTH

HENRY E. FRYE
OF COUNSEL

J. LEE LLOYD
SPECIAL COUNSEL

FOUNDED 1897

AUBREY L. BROOKS (1872-1958)
W.H. HOLDERNESS (1904-1965)
L.P. McLENDON (1890-1968)
KENNETH M. BRIM (1898-1974)
C.T. LEONARD, JR. (1929-1983)
CLAUDE C. PIERCE (1913-1988)
THORNTON H. BROOKS (1912-1988)
G. NEIL DANIELS (1911-1997)
HUBERT HUMPHREY (1928-2003)

GREENSBORO OFFICE
2000 RENAISSANCE PLAZA
230 NORTH ELM STREET
GREENSBORO, N.C. 27401

WASHINGTON OFFICE
601 PENNSYLVANIA AVENUE, N.W.
SUITE 900, SOUTH BUILDING
WASHINGTON, D.C. 20004

WRITER'S DIRECT DIAL

Via Overnight Mail and ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

**Re: KCRA-DT, Sacramento, CA
MB Docket No. 05-317
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST**

Dear Ms. Dortch:

On behalf of Hearst-Argyle Stations, Inc. ("Hearst-Argyle"), licensee of Digital Television Station KCRA-DT, Sacramento, California, this letter requests a waiver to prohibit satellite subscribers from obtaining signal tests of KCRA-DT's digital signal pursuant to Section 339(a)(2)(D)(vii) of the Communications Act, as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). The instant request is filed pursuant to the procedures set forth in the Commission's Public Notice in DA 05-2979 (Nov. 17, 2005).

KCRA-DT is the NBC affiliate located in the Sacramento Designated Market Area ("DMA"). The Sacramento DMA is ranked 19th among Nielsen Media's 210 television markets for the 2005-2006 television season. KCRA-DT has received a tentative digital channel designation of

Channel 35, which is KCRA-DT's allotted digital channel. *See* Public Notice, DA 05-2649 (Oct. 4, 2005). Accordingly, absent grant of the instant waiver request, effective April 30, 2006, satellite subscribers may request a signal test to demonstrate eligibility under SHVERA to receive a distant digital signal of a station affiliated with the same network as KCRA-DT.

Pursuant to **Section 339(a)(2)(D)(viii)(IV)** of the Act, Hearst-Argyle requests a waiver on the basis that KCRA-DT "experiences a substantial decrease in its digital signal coverage due to necessity of using [a] side-mounted antenna."

As certified in its Form 381 filing (File No. BCERCT-20041105AAV), KCRA-DT intends to operate its post-transition DTV station based on its allotted replication facilities. KCRA-DT is currently operating its DTV facility from a different tower pursuant to its DTV license in File No. BLCDT-20040122ADR. As previously explained to the Commission in KCRA-DT's request for waiver of the replication deadline filed on July 1, 2005, it is physically impossible for KCRA-DT to construct its DTV top-mount replication facility at its allotted height until the NTSC top-mount KCRA-TV antenna is removed at the end of the DTV transition.

While KCRA-DT is currently operating its DTV facility at maximum permissible power from its currently licensed site, the present operation results in a substantial decrease in its digital signal coverage area compared to its future replication facility. As previously submitted to the Commission, KCRA-DT's present operation is predicted to provide service to 4,921,573 people, while its future operation is predicted to provide service to 5,276,875 people. *See* Hearst-Argyle Supplement to Replication Waiver Request, Engineering Statement, MB Docket No. 03-15 (July 1, 2005).

Thus, absent grant of the instant waiver request to prevent signal testing under SHVERA, KCRA-DT is in jeopardy of losing service to 355,302 people who may otherwise be eligible to receive service from a distant network affiliate.

Furthermore, were KCRA-DT to proceed with construction of its replication facility before the end of the DTV transition, Hearst-Argyle would have to expend considerable resources to move its NTSC antenna to a lower level on the tower to make room for its DTV antenna. These costs, which would include the cost of purchasing an NTSC side-mount antenna, installation, and reworking the transmission line, would be "sunk costs" in equipment and labor that will only be useful until the DTV transition is complete. In addition, completion of KCRA-DT's replication facility before the end of the DTV transition would require Hearst-Argyle to lower KCRA-TV's NTSC antenna, resulting in a loss of NTSC service to approximately 211,398 people. *See id.*

Accordingly, because KCRA-DT experiences a substantial decrease of 355,302 people in its digital signal coverage area due to the present top-mount installation of its NTSC antenna and because construction of its replication facility prior to the end of the DTV transition would result in

Ms. Marlene H. Dortch

November 29, 2005

Page 3

a substantial loss of NTSC service, KCRA-DT satisfies the waiver criterion of Section 339(a)(2)(D)(viii)(IV) of the Act.

For the reasons stated herein, Hearst-Argyle requests a waiver to prohibit digital signal testing under SHVERA. If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

A handwritten signature in black ink, appearing to read "David Kushner", with a long horizontal flourish extending to the right.

David Kushner
Coe W. Ramsey
Counsel to Hearst-Argyle Stations, Inc.

cc: Via Hand-Delivery
Nazifa Sawez
Federal Communications Commission
Room 2-A726
445 12th Street, S.W.
Washington, DC 20554